

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF ILLINOIS

UNITED STATES OF AMERICA,)	
)	
Plaintiff,)	
)	
vs.)	Case No. 05-CR-40025-MJR
)	
DEVON S. SMITH,)	
)	
Defendant.)	

ORDER REGARDING MOTION TO REDUCE SENTENCE

REAGAN, District Judge:

By motion filed May 23, 2008, Defendant Smith seeks to reduce his sentence in the above-captioned case under 18 U.S.C. § 3582(c)(2). This Order **ADVISES** Defendant Smith how his motion will be handled in this District Court.

On December 10, 2007, the United States Supreme Court scrutinized the crack-cocaine-to-powder-cocaine sentencing disparity contained in the U.S. Sentencing Guidelines and held that federal district courts can deviate from the Guidelines in appropriate circumstances. *Kimbrough v. United States*, - U.S. -, 128 S. Ct. 558 (2007). On December 11, 2007, the Sentencing Commission decided that the amendments in question (which *reduce* the base offense level associated with some crack cocaine offenses) would be retroactively applied as of March 3, 2008.

On December 19, 2007, Chief Judge Herndon of this Court issued Administrative Order 102. That Order addressed the amendments to the Guidelines and the motions - like Smith's - being filed in the wake of these amendments.

Smith's motion has been docketed as "Document # 43." A copy of Administrative Order 102 is being mailed to Smith by the Clerk's Office of this Court. Pursuant to that Order, both the Federal Public Defender's Office and the United States Attorney's Office have been advised of this filing.

Although Administrative Order 102 appointed the Public Defender's Office to represent Defendant Smith in any proceedings relating to the motion to reduce sentence, that appointment does not prevent Smith from hiring private counsel, including any lawyer who may have represented him in earlier proceedings in this Court or the Court of Appeals.

Finally, Administrative Order 102 stated that the United States need not respond before March 10, 2008 (suggesting that the United States would file a response *after* March 10th). The Court now **CLARIFIES** that - at this time - no formal response need be filed by the United States, and no briefing schedule will be set by the Court. The undersigned Judge is carefully monitoring the status of each motion to reduce sentence, including Smith's motion (Doc. 43). If a formal response is needed, or if a hearing would be helpful, the undersigned Judge will enter a separate Order setting a briefing schedule or hearing.

IT IS SO ORDERED.

DATED this 27th day of May 2008.

s/ Michael J. Reagan
MICHAEL J. REAGAN
United States District Judge